

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

RANDY BRYANT WICK,

Plaintiff,

vs.

WARDEN FLETCHER, MONTANA
STATE PRISON, and STATE OF
MONTANA,

Defendants.

CV 18-00072-H-BMM-JTJ

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE

Plaintiff Randy Wick, a former prisoner proceeding without counsel, filed a Complaint (Doc. 2) alleging Defendants were deliberately indifferent to his safety and medical needs. The Court issued an Order finding that the Complaint failed to state a federal claim for relief and was subject to dismissal. Mr. Wick was given an opportunity to file an amended complaint and was specifically advised that if he failed to correct the defects in his Complaint, the Court would recommend that this matter be dismissed. (Doc. 8.)

Mr. Wick failed to file an amended complaint. Accordingly, for the reasons set forth in the Court's Order of March 11, 2019 (Doc. 8), the Court finds that Mr. Wick has failed to state a federal claim upon which relief may be granted, and

therefore issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED for failure to state a federal claim.
2. The Clerk of Court should be directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaints lack arguable substance in law or fact.
4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Wick may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Wick is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.

timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 19th day of April, 2019.

/s/ John Johnston

John Johnston

United States Magistrate Judge